

In the High Court of Judicature at Madras

Dated : 17.07.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.752 & 753 of 2007

The Commissioner of Income Tax
Chennai.

Appellant/ in both the Appeals

Vs

M/s.Shriram Transport Finance Co. Ltd.,
123, Angappa Naicken Street
Chennai 1.

Respondent/in both the Appeals

TAX CASE (APPEALS) under Section 260-A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 16.11.2005 made in ITA.Nos.1556/Mds/98 and 1349/Mds/98 for the assessment period 1994-95.against the order of the Commissioner of Income Tax (appeal)II Chennai.34 dated 30.4.98 in ITA No.50/97-98 against the order of The Assistant Commission of Income Tax Central Circle I (4) chennai 34 dated 27.3.97 in PA No.AAA-CS-7018-R.

For Appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

JUDGMENT

(Judgment of the Court was delivered
by K.RAVIRAJA PANDIAN, J.)

The Tax Case Appeal No.752 of 2007 is filed against the order of the Income Tax Appellate Tribunal 'B' Bench dated 16.11.2005 made in I.T.A.No.1556/Mds/98. The relevant assessment year is 1994-95. The following substantial questions of law are formulated :

- 1.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to account for only the "additional finance charges" on a cash

basis, while it is otherwise following a mercantile system of accounting and also accounting for the very same transaction on a mercantile basis under Company Law ?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee may be permitted to follow a mercantile system of accounting with respect to Company Law and a hybrid system of accounting with respect to Income Tax ?

3. The facts necessary for disposal of the appeal are as follows:

The assessee is a non-banking financial company. It has been accounting all its income and expenditure on mercantile basis until the assessment year 1993-94. From 01.04.1993 onwards in respect of income under the head "Additional Finance Charges" on hire purchase/lease transactions, it changed the method of accounting to cash for income tax purposes alone, while it was accounting the same under mercantile basis in the annual report as per the Companies Act. The assessing officer, on the reasoning that the assessee has followed the cash system of accounting in respect of additional financial charges on hire purchase lease transaction alone and the very same transaction has been accounted on mercantile basis in the returns filed under the Companies Act, held that it was not permissible and brought to assessment. On appeal by the assessee, the Commissioner of Income Tax (Appeal) allowed the appeal in respect of the above issue by following his own earlier order. The Revenue aggrieved by the finding arrived at with regard to the system of accounting followed by the assessee in respect of additional finance charges, filed an appeal before the Tribunal. The Tribunal, in a common order dated 16.11.2005 made in ITA.No.1556 of 1998, decided the issue in favour of the assessee and dismissed the appeal.

3. In this appeal it is contended that the the assessee had accounted for the additional finance charges on mercantile basis in their accounts filed with the Registrar of Companies, but, only for income tax purpose it has accounted for it on cash basis, which is impermissible in law. It is further contended that the respondent assessee is supposed to maintain its accounts on a cash or mercantile basis and the assessee being a Company could only maintain the accounts in one system i.e., on a mercantile system of accounting. The respondent assessee cannot choose specific items and account for the same on cash basis and other items on mercantile basis. The Tribunal rejected the plea of the revenue on the reasoning that while considering an identical issue with regard to additional finance charges or additional lease rentals, which was otherwise known as overdue charges, in ITA Nos.99 to 103/Mds/2002, the Tribunal has taken the view that the assessee could have cash system of accounting for the purpose of accounting additional finance charges or overdue charges. Following the said earlier order, the Tribunal dismissed the appeal.

4. From the records it could be seen that the assessee being a non banking financial company entered into a lease agreement with its

customers. One of the clause in the agreement provides for if the monthly instalments have not been paid, that would carry additional finance charges in the prescribed rate. Such clause is incorporated as a measure deterrence to instil some kind of fear in the minds of lessees and customers so that they keep paying the instalments regularly. Since such clause is inserted it cannot be said that such finance charges has been accrued to the assessee company or if the entries were made in the books of accounts maintained for the purpose of the Companies Act, it cannot be conclusively said that such additional finance charges had really accrued to the assessee company. We also find the change in the method of accounting has not caused a real loss to the revenue because such charges have been received by the assessee company, the same having been offered for taxation. Further, it is pertinent to mention that hybrid system of accounting was permissible during the relevant year and such system was abolished with effect from 01.04.1997 by substitution of section 145 of the Finance Act, 1995.

5. A similar issue has been considered by the Division Bench of this Court in the case of CIT v. Annamalai Finance Ltd., 275 ITR 451. In that case the assessing officer found that the change in the method of accounting of overdue charges from mercantile basis to cash system was not justified and added the overdue interest of mercantile basis. This Court while deciding the issue, observed as under :

"In the instant case, learned counsel for the revenue is not in a position to demonstrate or satisfy us that due to the change of accounting method adopted by the respondent/assessee, which is permissible in law as per the ratio laid down in (i) CIT v. Matchwell Electricals (I) Ltd., (2003) 263 ITR 227 (Bom) and (ii) Hela Holdings Pvt. Ltd., (2003) 263 ITR 129 (Cal), the revenue suffered any loss or such a change of methodology attracts tax evasion. Concededly, there is no finding to that effect in the assessment order or in the order of the Commissioner of Income Tax (Appeals)

The change of method of accounting of overdue charges from the mercantile basis to cash system method of accounting as followed by assessee, does not create any income; but the method of accounting only recognises income. Therefore, either to apply the accrual system or cash system, recognition of income is a paramount factor. In the present case, the disputed amount is the overdue charges receivable by the assessee from various parties on the basis of hire purchase and lease agreements. As per the terms of the agreements, overdue charges are payable by the parties concerned to the assessee when they make defaults in paying the instalments as per the schedule of payments. When the instalment itself is overdue, is not collected, there is no basis for making out a case that the additional overdue charges payable by the parties would be collectible with certainty. The terms of the agreements which enable the assessee company to demand overdue charges is only an enabling provision and that enabling provision does not guarantee the collection of overdue charges. It only gives a cause of action

to the assessee. In such cases, it is very difficult to recognise the income against the overdue charges.

We are, therefore, of the considered opinion that the Tribunal has rightly deleted the additions made towards overdue charges, acknowledging the change of method of accounting of overdue interest alone on cash basis."

6. The reason given in the above said decision would squarely cover both the questions of law raised in this appeal. Thus, as the questions of law raised were already answered in the affirmative against the revenue in the above case, this appeal is dismissed.

7. Tax case appeal No.753 of 2007 is filed by the revenue against the order (common) made in ITA No.1349/Mds/98 dated 16.11.2005 along with other appeal in ITA No.1556/Mds/98. In the said appeal (ITA 1349/Mds/98), at the instance of the assessee two issues were taken in the forefront which were:

- (1) Confirmation of computation of written down value;
- (2) Contingent deposit.

The Tribunal, after hearing both sides, found that the issue relating to carry forward of written down value was covered against the assessee by the decision of the apex Court in the case of Karnataka Small Scale Industries Development Corporation Ltd. v. CIT, 258 ITR 770 and decided the point against the assessee. Likewise the contingent deposit for statutory payment made by the assessee was allowed to be treated as trading receipt. That is also against the assessee. The said finding was given by following the judgment of this Court in the case of CIT v. Southern Explosives, 242 ITR 107. Thus, the two issues raised before the Tribunal by the assessee have been rejected against the assessee and held in favour of the revenue. In the circumstances of the matter, the revenue cannot be aggrieved by such an order. The Tribunal's order is in favour of the revenue and thus there is nothing for the revenue to file an appeal. Questions of law formulated by the revenue, as given below, have nothing to do with the issue involved in this appeal :

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to account for only the "additional finance charges" on a cash basis, while it is otherwise following a mercantile system of accounting and also accounting for the very same transaction on a mercantile basis under Company Law ?
2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee may be permitted to follow a mercantile system of accounting with respect to Company Law and a hybrid system of accounting with respect to Income Tax ?

Hence, this appeal is dismissed as nothing survives for adjudication in the appeal, which factum is also admitted by the Standing Counsel for the revenue.

kr/r/mf

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Assistant Registrar,
Income-Tax Appellate Tribunal,
III Floor, Rajaji Bhavan,
Besant Nagar, Madras 90
 - 2.The Assistant Commissioner of Income Tax
Central Circle I (4)
Chennai 34.
 3. The Commissioner of Income Tax (Appeal) II,
Chennai.34
 4. The Commissioner of Income Tax,
Chennai.34
- + 1 cc to Mrs.Pushya sitaraman Advocate SR.NO.43620

TEJ(co)
RD 8.8.07

सत्यमेव जयते
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